

The universal practice in retours, is to describe the lands by the old extent. The near coincidence of the two clauses in this retour proves that to have been done in this case. Where the descriptive values exceed the *cumulo valent*, the discrepancy may be fatal to the credibility of the retour; because there it cannot be determined what tenement is described beyond its real extent. The amount of the present objection is, that some of the lands may be entitled to a larger valuation than is given them in the descriptions.

There is no distinction in this part of our law betwixt the most ancient valuation, supposed to have taken place in the reign of Alexander III. and the later ones, by which the land-tax was paid, till after the Restoration. And the reason of the law, which is, that persons subject to a certain share of the public burdens, should likewise have a share in the legislation, militates against such a distinction.

When a freehold qualification is to be made out upon the old extent, all required by law is, that the same shall be ascertained by a retour preceding the 1681. And no objection can invalidate that evidence, which does not arise from the retours founded on by the claimant. A contrary practice would tend to unhinge the faith of all retours, and would be the source of endless disputes.

But, further, the retour of Elizabeth Monteith is in 1474; that of the Duke of Lennox in 1662. Many transactions might have taken place betwixt the co-heiresses and their successors. If necessary, the claimant is able to show that such actually existed.

The 24 tenements pointed out by the objector are parts of those which are particularly named. Although they were not; the legal presumption in such a case would be, that the inquest had them not under their consideration, otherwise the *cumulo valent* would have been increased.

' THE COURT repelled the objection.'

Act. *Hay Campbell.*

Alt. *Wight et H. Erskine.*

C.

Fol. Dic. v. 3. p. 403. Fac. Col. No 19. p. 37.

1781. March 6. ROBERT SCOTT against JOHN HAMILTON.

MR SCOTT, in evidence of the old extent of the lands on which he claimed to be enrolled as a freeholder in the county of Ayr, produced a retour, in which these lands were contained among others.

The *cumulo valent* in the retour extended the whole to L. 7 : 6 : 8; but the descriptive values, when joined, amounted only to L. 5 : 6 : 8.

THE LORDS were of opinion, That this difference was too considerable to be imputed to an error in calculation; and, on this account, refused to sustain the retour, as ascertaining the old extent of the lands belonging to the claimant.

Act. *Geo. Fergusson.*

Alt. *Ja. Boswell.*

C.

Fol. Dic. v. 3. p. 403. Fac. Col. No 43. p. 80.

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No 24.

No 25.